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U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 035 55500 Office: CALIFORNIA SERVICE CENTER Date: DEC 29 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition and denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are unavailable in the United States.

8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on January 14, 1998. The labor certification states that the position requires two years experience.

With the petition counsel submitted a photocopy of an undated letter, written in Italian, on the letterhead of [REDACTED] in Soverato, Italy, and an English translation. The translation states that the beneficiary worked at that restaurant from May 4, 1987 through September 30, 1990 as a cook. The letter is signed by [REDACTED]. The translator's certification states that the translation is a true translation of the original letter.

Because the evidence submitted did not demonstrate that the beneficiary has the requisite two years work experience, the California Service Center, on August 23, 2002, requested pertinent evidence. Consistent with the requirements of 8 C.F.R. 204.5 § (1)(3)(ii), the Service Center requested that evidence of the beneficiary's experience be in the form of letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The Service Center also requested additional evidence in support of the beneficiary's employment claim. The Service Center requested letters, contracts, and pay statements to verify the alleged employment and a current point of contact, current address, and current phone number for the beneficiary's alleged previous employer.

In response, counsel submitted another copy of the employment verification letter and translation previously provided.

On April 29, 2003, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite two years of salient work experience.

On appeal, counsel asserts that the beneficiary was unable to submit an additional employment verification letter because the beneficiary's previous employer had gone out of business. With that statement, counsel submits two versions of an employment verification letter, dated January 15, 2003, on letterhead of the [REDACTED] and purportedly signed by the restaurant's former executive chef. One version is in Italian and the other in English. The letters state that the beneficiary worked at that restaurant as previously stated. The letter adds that the beneficiary worked 40 to 45 hours per week.

The letterhead upon which that more recent employment verification letter is printed is not identical to the letterhead upon which the previous employment verification letter was printed. Counsel states that the former owner of the restaurant cannot be located, but that the executive chef retained the company's letterhead.

The evidence submitted in support of the appeal is not persuasive. First, that a former employee would retain letterhead upon which to issue company correspondence for a defunct company is suspicious. That the letterhead would have changed is also suspicious. Further, the writer of that letter does not claim to be currently employed at that restaurant. The letter does not contain the writer's address, as required by 8 C.F.R. 204.5 § (1)(3)(ii). The letter does not contain a point of contact, current address, and current phone number for the previous employer, as was requested in the August 23, 2002 Request for Evidence. The alleged former coworker who wrote that letter did not provide, in lieu of that information, his own address and phone number. Further still, the additional documentary evidence requested in the Request for Evidence was not provided.

If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The evidence submitted does not demonstrate credibly that the beneficiary has the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.